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FACTFINDING REPORT AND RECOMMENDATIONS

January 6, 2011
December 24, 2010 (Original Report Distributed Private to Panel Members for Consideration and Possible Private Negotiations)

In the Matter of the Impasse Factfinding

ISSUES: Health Insurance Benefit And Agreement (2010-2013)

Between

WASCO UNION HIGH SCHOOL DISTRICT

And

CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION, WASCO CHAPTER 166

PERB Case No. LA-IM-3613-E

RE: FACTFINDING: Impasse Over Various Issues: Health Insurance Increase 2010-2013 (Wasco Union High School District)

Factfinding Panel Members: Carl B. A. Lange III, on behalf of the District; Michael D. Branham, on behalf of the Association. Spokespersons were: Michael Noland (Association) and Anthony V. Leonis (District)

A hearing was held on December 13 at the District offices, wherein the parties were given opportunity to present evidence and argument on the impasse issues submitted to PERB. The hearing was preceded by informal discussion in attempts to clarify and resolve the principal issue of retroactive payment of the Health Insurance Benefit increase which was effective September, 2010. The hearing was not closed, but continued in the event the Panel or the parties determined that they wanted to reopen for further presentations.

In the interest of expediting the process of resolving this Impasse, the Factfinding Panel, or a majority thereof, is issuing this brief report and recommendations on the principal issues.

The Panel heard evidence from both sides regarding whether the District should honor the parties' agreement, reached on in June, 2010, to increase the District's contribution to the Health Insurance premium. The Association's final position and argument on this (and other issues) is described in CSEA Exhibit 7. The District's final position is outlined in its post-hearing paper of December 13 (Exhibits 17 and 18), received by the Chair of the Panel on December 14, along with post-hearing argument and a CSEA Letter (DX-19) purporting to support its position of 'no retroactivity' on the payment of the health insurance premium increase. The District's position is that per its past practice and the evidence of 'no agreement', there can be no recommendation to pay the already-withheld premium increase since September, 2010. The Association submitted a closing response argument, claiming that the District's argument is specious and ignores the reality of the tentative agreement reached on health insurance in June, 2010.

1. On the issue of the payment of the Health Insurance premium increase, the Panel finds that the parties reached agreement on that issue in June, 2010.
2. On all other issues, except for the issue of Waiver language in the agreement which is before the PERB for resolution, the parties have reached agreement, including the matter of Salary, and Term of the Agreement.

RECOMMENDATIONS OF THE PANEL OR A MAJORITY THEREOF:

1. That the parties retain the *status quo* on all articles of the Collective Bargaining Agreement, except where they have otherwise reached agreement to change.
2. That the District pay the Health Insurance premium increase, effective July 1, 2010 to employees of the bargaining unit. (The District pay the employees the approximately $450.00 withheld for three payment periods).
3. By adopting the above recommendations, the parties will have a complete agreement which should close off further negotiations.
4. The parties are hereby ordered to pay the Chair of the Panel's per diem and expenses per their agreement (Invioce Attached).

A Member or Members of the Factfinding Panel have also submitted their own document(s), dissenting or concurring with the Recommendations, which are attached as part of this Report.

Respectfully Submitted,

	/s/ Michael D. Branham	/s/ Carl B.A. Lange III
Philip Tamoush, Chair	Michael D. Branham, Member CONCUR	Carl B.A. Lange III, Member DISSENT (See Attached)

cc: Public Employment Relations Board

Dissent to Fact-finding Panel Recommendation
PERB Case No: LA-IM-3613-E

The District Panel member respectfully dissents from Recommendations #1 and #2 of the "Recommendation of the Panel or a Majority Thereof" as follows:

Recommendation #1:

The Panel should not recommend that the parties ". . . retain the *status quo* on all articles of the Collective Bargaining Agreement, except where they have otherwise reached agreement . . ." Instead, the Panel should recommend that the parties accept the text of the District's November 18, 2010 proposal to CSEA.

The District's proposal encompasses both the *status quo* as well all outstanding issues between the parties.

Recommendation #2:

The Panel should not recommend that the District "pay the employees" (reimburse) for amounts withheld for health insurance. It is not a matter of equity or fairness. It is simply a matter of adherence to a negotiated contract. The 2007-2010 Contract contains the following text in Article IV, Health and Welfare Benefits, paragraph E:

> "E. Any increase in premium cost for the benefits specified above for the 2010-2011 school year will be at the expense of the eligible employee through payroll deduction unless specifically agreed otherwise during the re-opening of this Agreement."

This language has existed in prior agreements since 1982 and has been the custom and practice when negotiations did not achieve an agreement. And, under both District and CSEA proposals, this language was to continue in the proposed 2010-2013 contract.

The Panel majority rejected the District's arguments that there was no "agreement" between the parties. At most, the parties' proposals/counter-proposals specified the same level of the District's 2010-2011 and 2011-2012 health insurance contributions. As the District has pointed out, the assertion that no "agreement" was reached is supported by the lack of any signed Tentative Agreement in June or July 2010, by continued bargaining proposals/counter-proposals up to November 18, 2010, and by CSEA's own Policy 610, which mandates specific procedures for accepting and ratifying agreements - none one of which had been initiated as of the date of the fact-finding hearing.

Clearly, there was no agreement with regard to the reimbursement issue. CSEA proposed that unit members be reimbursed. The District proposed no reimbursement. Instead, the amounts deducted would be carried over and "back-filled" by increasing the cap at the beginning of the 2012-2013 school year. The District's position was consistent with implementation of prior negotiated settlements, while CSEA's position was not. The Panel majority should have recommended the District's proposal because it was consistent with historic custom and practice.

It is inappropriate for the Panel to base any recommendation for reimbursement on the existence of an "agreement" regarding health benefits when, at most, that "agreement" related only to the level of contribution and not the reimbursement issue. To do so would result in additional adverse effects to an already-weakened bargaining relationship. It vitiates the language

of Article IV, paragraph E. Further, it insulates CSEA from any consequence if CSEA obstructs or "slow-plays" the negotiations process.

In this case, the delay in reaching a new collective bargaining agreement was based on CSEA's continuing demand that the District withdraw the disputed contract language on "non-mandatory" subjects - even after they had filed the ULP challenging the District's position well before the September deduction was made. CSEA had continuously and consistently rejected District proposals to proceed with the 2007-2010 disputed language intact and have PERB decide if it would have to be eliminated from the terms of the 2010-2013 Contract. CSEA withdrew its prior demand and agreed (as that term has been applied by the majority in this case) to the District's position on the disputed language on November 17th. CSEA could have agreed at any time before November 17th. That agreement would have stopped any dispute over reimbursement. To recommend reimbursement now (when CSEA could have made the November 17th agreement even before the first deduction was made) rewards intransigence and sends the absolutely wrong message about the obligation to negotiate in good faith and attempt to reach mutually acceptable outcomes.

Respectfully submitted,

/s/ Carl B.A. Lange III

Carl B.A. Lange III
District-Appointed Panel Member